BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. :	**5135 of 2025**
Date of filing of complaint:	**09.10.2025**
Date of Order:	**08.09.2026**

Complainants

1. Rajeev Kaushik
2. Seema Kaushik

R/o: EHF-267-A-SF-100, Emerald Hills Floors, Sector-65, Gurgaon-122101

Versus

1. Imperia Structures Ltd.
2. Renuka Traders Private Limited

Both having registered office at: A-25, Mohan Cooperative Industrial Estate, Mathura Road, New Delhi-110044. **Respondents**

CORAM:

Shri Arun Kumar **Chairman**

APPEARANCE:

Ms. Uma Singh (Advocate) Complainants

Ms. Priya Sharma (Advocate) Respondents

ORDER

1. The present complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the

rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name and location of the project	The Esfera, Sector 37 C, Gurgaon, Haryana
2.	Nature of the project	Group Housing
3.	DTCP license no.	64 of 2011 dated 16.07.2011 valid up to 15.07.2024
4.	Name of Licensee	M/s Prime IT Solutions Pvt. Ltd. and 4 others
5.	RERA Registered/ not registered	352 of 2017 dated 17.11.2017 valid up to 31.12.2020 plus six months covid-19 extension i.e., 30.06.2021
6.	Extension of RERA registration	RC/ REP/HARERA/GGM/ 352 of 2017 /7(3)/2022/04 dated 30.08.2022
7.	Validity of extension	01.07.2021 to 30.06.2024
8.	Booking by original allottee	02.04.2012 (As per page no. 29 of the complaint)
9.	BBA with original allottee	23.12.2013 (As per page no. 23 of the complaint)
10.	Date of endorsement of unit from original allottee in favor of complainants	04.03.2014 (As per page no. 80 of the complaint)
11.	Apartment no.	A-1003, 10th floor, Tower-A (As per page no. 29 of the complaint)
12.	Unit measuring	2400 sq. ft. (super area) (As per page no. 29 of the complaint)
13.	Revised unit area	2600 sq. ft. (super area)

		(As per offer of possession dated 17.07.2024 on page no. 78 of the reply)
14.	Possession clause	***10.1 Schedule for possession of the said apartment*** *The developer/company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said apartment* ***within a period of three and half years from the date of execution of this agreement*** *unless there shall be delay or there shall be failure due to reasons mentioned in clauses 11.1, 11.2, 11.3 and clause 41 or due to failure of intending allottee(s) to pay in time the price of the said apartment along with other charges and dues in accordance with the schedule of payments given in Annexure F or as per the demands raised by the developer/company from time to time or any failure on the part of the intending allottee(s) to abide by all or any of the terms or conditions of this agreement.* (As per page no. 44 of the complaint)
15.	Due date of possession	23.06.2017 (**Note:** Due date is to be calculated three and half years from the date of execution of agreement i.e., 23.12.2013)
16.	Total sale consideration	Rs.1,06,34,000/- (As per page no. 35 of the complaint)
17.	Amount paid by the complainants	Rs.1,30,14,480/-

		(As per details of payment on page no. 18 of the complaint)
18.	Payment plan	Construction link plan (As per page no. 68 of the complaint)
19.	Demand note cum possession offer for fit-outs	29.07.2021 (As per page no. 80 of the reply)
20.	Letter of intimation of possession	07.12.2022 (As per page no. 79 of the reply)
21.	Offer of possession for fit outs	15.03.2024 (As per page no. 135 of the complaint)
22.	Email by respondent regarding principal OC	08.04.2024 (As per page no. 120 of the complaint)
23.	Occupation certificate	12.07.2024 (for tower A) (As per page no. 76 of the complaint)
24.	Offer of possession	17.07.2024 (As per page no. 78 of the reply)
25.	Service and maintenance agreement	22.11.2024 (As per page no. 154 of the reply)
26.	Letter regarding conveyance deed	29.10.2025 (As per page no. 168 of the reply)

B. Facts of the complaint:

3. That the complainants have made following submissions:

I. That the unit was originally booked on 02.04.2012, with an allotment letter issued on 24.05.2012. A builder buyer's agreement was executed on 23.12.2013, wherein clause 10.1 expressly stipulated that possession would be delivered within 3.5 years, i.e., by 22.06.2017. Thereafter, on 14.01.2014, the unit was transferred in the names of the complainants, and the BBA was duly endorsed on 04.03.2014.

II. That the respondent has mischievously obtained a purported occupation Certificate (OC) dated 12.07.2024 for Tower A. The said OC is defective and does not signify readiness for lawful possession. The

respondent has merely granted temporary fit-out access (Sept–Nov, 2024) without handing over legal possession with all amenities and completion of common areas.

III. That the complainants have scrupulously complied with every financial demand raised by the respondent under the construction linked payment plan. A home loan of Rs.75,00,000/- was availed, disbursed to the respondent in stages. The complainants bore heavy loan interest obligations during this period. The full and final payment was completed on 29.08.2023, establishing beyond doubt that there is no default on their part. Despite receiving the entire sale consideration, the respondent has not issued a final tax invoice or possession demand note, but only arbitrary 'demand notes' without statutory particulars. Such omission has left the complainants in limbo.

IV. That despite contractual and statutory obligations, the respondent failed to offer possession by the promised date of 22.06.2017, resulting in a delay exceeding seven years. The respondent later communicated via email that an occupancy certificate for Tower-A was issued on 12.07.2024, but no lawful possession letter, possession certificate, or handover acknowledgment has ever been issued. Instead, only temporary access for fit-outs was permitted between September–November 2024, which cannot in law amount to possession.

V. That despite such gross delay, the respondent has demanded advance maintenance charges of Rs.85,668/- on 22.11.2024, without offering legal possession. The respondent has further unilaterally charged for an increase of approx. 200 sq. ft. in super area. This was never part of the executed BBA dated 23.12.2013. This constitutes an unfair trade practice and arbitrary enrichment.

VI. That due to the inordinate delay of over 7 years, the complainants have suffered severe financial and mental hardship. Even as on date, despite full payment and issuance of the OC, the respondent has failed to hand over possession with all requisite documentation, including possession letter, OC copy and NOC from SWAMIH. This constitutes a clear breach of the builder buyer's agreement and the statutory obligations of the respondent under section 18 of the Act, 2016, the complainants are entitled to possession along with delay compensation and related reliefs

VII. That the cause of action in the present matter first arose on 22.06.2017, being the promised possession date under clause 10.1 of the builder buyer's agreement, when the respondent failed to hand over possession. It was further reinforced on subsequent dates including 29.08.2023, when the complainants made full and final payment but possession was still not delivered, thereafter on 12.07.2024, when the respondent claimed to have obtained the occupancy certificate but still failed to issue a possession letter or handover documents and further in November 2024, when the respondent wrongfully demanded maintenance charges without delivering lawful possession. The cause of action continues to subsist till date, as the respondent has failed to provide lawful possession, requisite documentation (Possession Letter, OC, NOC from SWAMIH), and continues to be in breach of its contractual and statutory obligations.

VIII. That the present complaint is within limitation under the continuing cause of action principle, consistently upheld by courts and RERA Authorities in cases of delayed possession.

C. Relief sought by the complainants:

4. The complainant has sought following relief(s):

i. Direct the respondent to hand over lawful possession of the subject apartment to the complainants, together with interest on the deposited amount for the period of delay in terms of the Act, 2016.

ii. Direct the respondent to refund GST Input Tax Credit collected but not passed on to the complainants, together with applicable interest.

iii. Direct the respondent to refund the parking charges illegally collected from the complainants together with applicable interest.

iv. Direct the respondent to refund the additional amount collected towards the alleged increase of 200 sq. ft. in super area (not contemplated under the builder buyer's agreement), together with applicable interest.

v. Direct the respondent to refund the advance maintenance charges illegally collected without granting lawful, physical, and final possession of the apartment, together with applicable interest.

vi. Direct the respondent to issue a final tax invoice/statement of account and a lawful possession letter.

vii. Direct the respondent not to make the complainants sign any maintenance agreement as the project has been ordered to be handed over to the Apartment Owner's Association.

viii. Award compensation/damages to the complainants for mental agony, harassment, inconvenience, and financial loss suffered, including rent and other incidental charges, occasioned by the inordinate delay and deficiencies attributable to the respondent.

ix. Award the costs of litigation in favour of the complainants and against the respondent.

5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed

in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent no. 1:

6. The respondent no. 1 has contested the complaint on the following grounds:

I. That the unit in question was originally allotted to Mr. Manish Gautam and Ms. Anshu Gautam vide builder buyer's agreement dated 23.12.2013 and was subsequently endorsed in favour of the complainants. In this regard, a letter dated 14.01.2014 was issued to the complainants, which was duly acknowledged and accepted by them.

II. That the complainants after making independent enquiries and being fully satisfied with the project, voluntarily approached the respondent and agreed to the booking of the residential unit in the respondent's project "The Esfera II", situated at Sector-37-C, Gurugram, Haryana. The respondent company provisionally allotted the unit bearing no. A-1003 in favor of the complainants for a total consideration amount of Rs.1,30,14,480/- including applicable tax and other charges and opted the construction linked payment plan on the terms and conditions mutually agreed by the complainants and the respondent company.

III. That the said BBA was endorsed in favour of the complainants on 04.03.2014. It is pertinent to mention that the BBA duly covers all the liabilities and rights pertaining to both the parties involved. It is submitted that entering into the BBA was a necessary and voluntary step taken by the complainants in furtherance of their own desire to purchase the said unit.

IV. That the in-principle occupation certificate for the tower in which the complainant's unit is situated was duly obtained on 13.03.2024. The

same was duly communicated to the complainants vide letter dated 15.03.2024, wherein they were requested to complete the necessary formalities for handover of possession.

V. That the final OC was obtained on 12.07.2024 and immediately thereafter, the respondent company once again requested the complainants vide communication dated 17.07.2024 to complete the necessary formalities for handover of the unit.

VI. That the complainants have alleged that the respondent company has purportedly obtained an OC and that, in reality, the said OC is defective and grants only fit-out access. It is submitted that the OC so obtained is valid, lawful, and duly issued by the competent authority. The same is not restricted merely to fit-out access. It is further submitted that residents of other flats in the said project are already residing in their respective units, which clearly evidences that the said OC is operative and effective. Accordingly, the allegation that the OC is purported, defective, or misleading is false, baseless, and is hereby emphatically denied. The OC having been issued under the seal and authority of the competent authority, such allegations indirectly cast unwarranted aspersions on the credibility of the issuing authority and deserve to be rejected.

VII. That despite being duly informed and offered possession in accordance with Section 19(10) of the Act, 2016, which mandates an allottee to take possession within two months from the date of issuance of the OC, the complainants deliberately failed to comply with their obligation to take possession of the unit. This conduct reflects a lack of *bona fides* on the part of the complainants and is indicative of an attempt to unjustly delay the process while continuing to make baseless allegations against the respondent company.

VIII. That the complainants have not approached this Hon'ble Authority with clean hands or with *bona fide* intentions. The conduct of the complainants itself demonstrates this, as they repeatedly defaulted in making timely payment of the due instalments, leaving a substantial amount outstanding for a considerable period.

IX. That payment of consideration amount as and when asked for is a necessary consideration and obligation which was supposed to be fulfilled by the complainants. The BBA executed between the parties have clearly depicted the intention of the respondent company with respect to schedule of payment.

X. That the complainants have further alleged that the super area of the unit was unilaterally increased from 2400 sq. ft. to 2600 sq. ft. However, this allegation is entirely baseless and misleading. The increase in area was duly and transparently communicated to the complainants on multiple occasions, vide letters dated 29.07.2021 and 07.12.2022, well before the issuance of the occupancy certificate. Moreover, clause 9.2 of the BBA, explicitly provides that *"In case of any major alteration/modification resulting in excess of +/- 10% change in the super area of the said apartment or material/substantial change, in the sole opinion as determined by the Developer/Company, in the specifications of the materials to be used in the said building/said Apartment may time prior to and upon the grant of occupation certificate, shall intimate the Intending Allottee..."*. The respondent has scrupulously complied with this provision. It is pertinent to mention that the increase in area falls exactly within the permissible limit as per the BBA. That initially the super area was 2400 sq. ft., and the revised area is 2600 sq. ft., reflecting an increase of 200 sq. ft., which is within the scope allowed under the BBA.

XI. That the complainants were duly informed of the grant and receipt of the OC. The allegation that the said OC is purported is vehemently denied. The complainants themselves made the requisite payments only after being notified of the receipt of the OC. In view thereof, all claims and allegations raised by the complainants in respect of the OC are false, misconceived, and emphatically denied.

XII. That further the delay, in completion of construction of the said project was caused due to certain unforeseeable circumstances. It is submitted that according to the BBA, Force Majeure provides for both shortage of building material and labour required, along with providing for unforeseeable events which make the construction impossible to be carried out. Firstly, owing to unprecedented air pollution levels in Delhi NCR, the Hon'ble Supreme Court directed a ban on construction activities in the said region from 04.11.2019 onwards, which was a huge hurdle to realty developers in the city. The Air Quality Index (AQI) at the time was running as high as 900 PM, which is severely unsafe for the health. Later, in furtherance of declaration of the AQI levels as 'not severe' by the Central Pollution Control Board (CPCB), the Hon'ble Supreme Court lifted the ban conditionally on 09.12.2019, allowing construction activities to be carried out between 6 a.m. and 6 p.m. and consequently, the complete ban was lifted by the Hon'ble Supreme Court on 14.02.2020. This had caused the project to be delayed and thus, there was a delay in application for OC. Secondly, when the complete ban was lifted on 14.02.2020, the Government of India imposed National Lockdown on 24.03.2020 due to pandemic COVID-19, and later lifted the lockdown, conditionally, on 17.05.2020. It must be pertinent to mention herein that the pandemic COVID-19 has caused immense delay and obstruction to the construction of the building, as

the procurement of labour and raw material proved to be highly challenging. The whole situation led to a reverse migration of workers, who left cities and returned back to their villages, for safety of themselves and their families. It is estimated that around 6 lakh workers walked to their villages, and around 10 lakh workers are stuck in relief camps. The aftermath of lockdown or post lockdown periods have left great impact on the realty sector for resuming their respective constructions. Thus, causing delay in the completion of the said project, this was already hampered by the non-payment of outstanding dues by numerous allottees, including the complainants.

XIII. That the respondent company entered the Corporate Insolvency Resolution Process vide order dated 31.08.2023, passed by the Hon'ble National Company Law Tribunal. During the period of the moratorium, which lasted for six months, all operations of the respondent company were suspended. The respondent company was subsequently discharged from the CIRP by the order of the Hon'ble National Company Law Appellate Tribunal dated 01.02.2024.

XIV. That the respondent was also adversely impacted by legal proceedings initiated under Section 7 of the Insolvency and Bankruptcy Code, 2016, before the Hon'ble National Company Law Tribunal, New Delhi Bench, in CP IB No. 656/ND/2024. The said proceedings were initiated by a group of allottees on 13.05.2024, claiming the status of financial creditor under various real estate projects undertaken by the respondent. Consequently, the Tribunal dismissed the insolvency application for failing to meet the mandatory threshold requirement of 100 allottees or 10% from the same real estate project, as stipulated under the second proviso to Section 7(1) of the Insolvency and Bankruptcy Code, 2016. These legal proceedings, including the

pendency of adjudication and the looming threat of CIRP, created an atmosphere of uncertainty and led to considerable disruption in day-to-day operations and financial planning.

XV. That despite facing severe financial challenges owing to multiple allottees defaulting on their payment obligations and several others exiting the project midway, the respondent company, in order to ensure timely completion of the project, secured a last-mile funding from the SWAMIH Investment Fund-I. This Alternate Investment Fund was established under the special window created by the government of India for stressed real estate projects.

XVI. That the respondent company has been bearing a substantial interest burden on the said funding. Nevertheless, through sustained efforts and financial discipline, the respondent has successfully obtained the OC for all towers of the project and is now focused solely on completing the finishing works and handing over possession to the respective allottees.

XVII. That the complainants have alleged that despite having complied with all their obligations, the conveyance deed and other related formalities have not been completed. The said allegation is denied. It is submitted that due to internal procedural requirements, the process took some time; however, the same has duly been initiated. It is further pertinent to mention that the complainants have already executed the maintenance agreement on 22.11.2024. The respondent company has been consistently following up with the complainants for completion of the remaining formalities and has sent multiple emails and reminders, the most recent being dated 29.10.2025. Despite the same, the complainants have been raising unwarranted conditions and have been avoiding completion of the process on one pretext or another.

Accordingly, the allegation that the respondent company has delayed execution of the conveyance deed or related formalities is false, baseless, and liable to be rejected.

XVIII. That the occupation certificate for the project was duly obtained by the respondent last year, and ever since, the respondent company has been maintaining and up-keeping the premises entirely at its own expense. Therefore, the prayer of the complainants seeking waiver of holding and maintenance charges is wholly untenable and deserves outright rejection. Furthermore, as per clause 7.3 of the model builder buyer's agreement prescribed under the Rules, 2017, it is categorically provided that in *the event the allottee fails to take possession or execute the conveyance deed within the stipulated period after the offer of possession, the promoter shall be entitled to charge holding charges for such period of delay.* Accordingly, the imposition of holding charges in the present case is not only legitimate but also fully in accordance with the statutory model agreement framed under the aforesaid Rules. Hence, the respondent company is lawfully entitled to recover such holding charges, as the delay in execution of the conveyance deed is solely attributable to the complainants, who have deliberately refrained from completing the requisite formalities to unjustly enrich themselves at the expense of the respondent.

XIX. That the present complaint is not maintainable and is liable to be dismissed as being devoid of merit and contrary to law. The complainants, having failed to discharge their contractual obligations, has approached this Hon'ble Authority with unclean hands and suppressed material facts. Accordingly, the reliefs sought are misconceived and not liable to be granted.

7. The respondent no. 2, i.e., Renuka Traders Pvt. Ltd. has filed an application on 07.01.2026 requesting the deletion of its name from array of parties. It is stated in the application that the complainants have improperly and unnecessarily made respondent no. 2 as a party to the present complaint. The unit of the complainants is situated in the project "The Esfera" which is the project of the respondent no.1 and no relief has been sought from respondent no. 2. Thus, the Authority vide order dated 08.09.2026 has allowed the said application of the respondent no. 2 as keeping respondent no. 2 as a party to the complaint would not serve any purpose.
8. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

9. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram

district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

> ***Section 11(4)(a)***
> *Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;*
> ***Section 34-Functions of the Authority:***
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.*

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on objections raised by the respondent:

F.I Objection regarding force majeure conditions:

13. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as certain environment restrictions, demonetisation, shortage of labour, increase in cost of construction material and non-payment of instalments by different allottees of the project, etc. But all the pleas advanced in this regard are devoid of merit. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. The events taking place such as restriction on construction due to weather

conditions were for a shorter period of time and are yearly one and the promoter is required to take the same into consideration while launching the project. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

G. Findings on relief sought by the complainants:

G.I Direct the respondent to hand over lawful possession of the subject apartment to the complainants, together with interest on the deposited amount for the period of delay in terms of the Act, 2016.

14. In the present complaint, the complainants intend to continue with the project and are seeking delayed possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

> *"Section 18: - Return of amount and compensation*
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
> .....
> ***Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."***
>
> ***(Emphasis supplied)***

15. The due date of possession of the apartment as per clause 10.1 of the builder's buyer's agreement dated 23.12.2013, is to be calculated as three and a half years from the date of execution of buyer's agreement, which comes out to be 23.06.2017.

16. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prevailing rate of interest. Proviso to section 18 provides that where an

allottee does not intend to withdraw from the project, they shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

17. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

18. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 08.09.2026 is **8.80%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%.**

19. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

20. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.80% by the respondent /promoter which is the same as is being granted to the complainants in case of delayed possession charges.

21. The counsel for the respondent vide proceedings of the day dated 08.09.2026 draws attention of the Authority to the fact that the occupation certificate of the project was received on 12.07.2024 and offer of possession was made to the complainants on 17.07.2024.

22. The Authority has observed that the due date of possession was lapsed in the year 2017. The total sale consideration has been paid by the complainant on 13.09.2025 and thereafter there are no outstanding dues payable by the allottee in respect of the residential space bearing no. 1003 situated on 10th floor in Tower-A. There is substantial delay of more than 7 years in making offer of possession i.e., 17.07.2024 after obtaining occupation certificate on 12.07.2024 as the due date of possession has lapsed way back on 23.06.2017.

23. As per Section 19(10) of the Act of 2016, it is the obligation of the allottee to take possession within two months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate has been obtained by the respondent-builder and offered the possession of the subject unit to the complainants after obtaining occupation certificate on 17.07.2024. So, it can be said that the complainant would come to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date

of offer of possession. This 2 months of reasonable time is to be given to the complainants keeping in mind that even after intimation of possession, practically one has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but that is subject to that the unit being handed over at the time of taking possession is in habitable condition. As it is mentioned in the offer of possession dated 17.07.2024 that there is no dues payable by the allottees in respect of the unit and they have paid the entire sale consideration in respect of the unit no. 1003 situated on 10th floor in Tower-A, thus, the respondent is directed to handover the possession of the unit to the complainants within 30 days from the date of this order.

24. The complainants in the present complaint are subsequent allottees and had purchased the apartment in question from the original allottees and thereafter, the respondent had acknowledged the same transaction vide endorsement letter dated 04.03.2014. In terms of the order passed by the authority in complaint titled as ***Varun Gupta Versus Emaar MGF Land Ltd. (CR/4031/2019)***, the complainants are entitled to delayed possession charges w.e.f. the due date of possession i.e., 23.06.2017 as the complainants stepped into the shoes of the original allottees before the due date of possession. Thus, the delay possession charges shall be payable from the due date of possession i.e., 23.06.2017 till actual handing over of possession or offer of possession made on 17.07.2024 after obtaining occupation certificate from competent authority plus two months, whichever is earlier.

25. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's agreement dated 23.12.2013 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section

11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 23.06.2017 till offer of possession (17.07.2024) plus 2 months i.e., up to 17.09.2024 at the prescribed rate i.e., 10.80 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G.II Direct the respondent to refund GST Input Tax Credit collected but not passed on to the complainants, together with applicable interest.

26. The complainants have submitted that they are entitled to seek Input Tax Credit of GST pursuance to the order dated 05.11.2019 in case no. 55/2019, case titled as "Shri Hardev Singh & Ors. V/s M/s Ocean Seven Buildtech Pvt. Ltd." passed by the National Anti-Profiteering Authority. The Authority observes that the legislature while framing the GST law specifically provided for anti-profiteering measures as a check and to maintain the balance in the inflation of cost on the product/services due to change in migration to a new tax regime i.e., GST, by incorporating Section 171 in Central Goods and Services Tax Act, 2017/Haryana Goods and Services Tax Act, 2017, the same is reproduced herein below:

"Section 171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."

27. As per the above provision, the benefit of tax reduction or 'Input Tax Credit' is required to be passed onto the customers in view of Section 171 of HGST/CGST Act, 2017. In the event, the respondent/promoter has not passed the benefit of ITC to the buyers of the unit in contravention to the provisions of Section 171(1) of the HGST Act, 2017. The allottees are at liberty to approach the State Screening

Committee Haryana for initiating proceedings under Section 171 of the HGST Act against the respondent-promoter.

G.III Direct the respondent to refund the parking charges illegally collected from the complainants together with applicable interest.

G.IV Direct the respondent to refund the additional amount collected towards the alleged increase of 200 sq. ft. in super area (not contemplated under the builder buyer's agreement), together with applicable interest.

G.V Direct the respondent to refund the advance maintenance charges illegally collected without granting lawful, physical, and final possession of the apartment, together with applicable interest.

28. The above-mentioned relief(s) sought by the complainants are taken together being inter-connected.

- **Parking Charges**

29. The complainants have contended that the respondent-promoter has charged the parking charges which is not as per the buyer's agreement dated 23.12.2013. However, on perusal of the buyer's agreement, the Authority has observed that it has been mentioned in para 1.5 of the buyer's agreement dated 23.12.2013 that the complainants had to pay additional charges which includes Rs.2,50,000/- as reserved parking charges. Though there is no document placed on record by either party to substantiate the fact that how much has been paid in lieu of parking charges. Thus, the complainants have to pay Rs.2,50,000/- as parking charges as agreed vide buyer's agreement dated 23.12.2017.

- **Increase in Area**

30. Further, the complainants have contended that the respondent-promoter has increased the area of the unit by 200 sq. ft. which is not contemplated in the buyer's agreement and the respondent has charged an additional amount towards the same. A buyer's agreement w.r.t allotted unit was executed between the parties on 23.12.2013 and clause 9.2 provides with regard to major alteration/modification

resulting in excess of +/- 10% change in the super area of the apartment or material/ substantial change in the sole opinion of and as determined by the developer/company. A reference to clause 9.2 of the agreement must detail as under:

> ***9.2 Major alteration/modification***
> *In case of any major alteration/modification resulting in excess of +10% change in the super area of the aid apartment or material/substantial change, in the sole opinion of and as determined by the Developer/company, in the specifications of the materials to be used in the said building/said apartment any time prior to and upon the, grant of occupation certificate, the develop/company shall intimate the intending allotee(s) in writing the changes thereof and the resultant change, if any, in the price of the said apartment to be paid by him/her and the intending allottee agrees to deliver to the Developer/Company his/her written consent or objections to the changes within thirty days from the date of dispatch by the Developer/Company of such notice failing which the intending allottee shall be deemed to have given his/her full and unconditional consent to all such alterations/modifications and for payment, if any to be paid in consequence thereof.....*

31. It is not disputed that the due date for completion of the project has already expired on 23.06.2017 and occupation certificate was received on 12.07.2024. The amount charged by the respondent on account of increased area is as per the above-mentioned provision of the buyer's agreement. If the complainants have any objection against the proposed change/increase, then she has a right to challenge the same within the period stipulated as per buyers' agreement. However, the respondent-builder is also duty bound to explain that increase in the super area of the unit vis a vis the project.

32. Considering the above-mentioned facts, the Authority observes that the respondent has increased the super area of the flat from 2400 sq. ft. to 2600 sq. ft. vide offer of possession dated 17.07.2024 with increase in area of 200 sq. ft. i.e., 10% without any justification or prior intimation to the complainants.

33. That in ***NCDRC consumer case no. 285 of 2018 titled as Pawan Gupta Vs Experion Developers Private Limited***, it was held that the

respondent is not entitled to change any amount on account of increase in area. The relevant part of the order has been reproduced hereunder:

> *The complaints have been filed mainly for two reasons. The first is that the opposite party has demanded extra money for excess area and second is the delay in handing over the possession. In respect of excess area, the complainant has made a point that without any basis the opposite party sent the demand for excess area and the certificate of the architect was sent to the complainant, which of a later date. The justification given by the party that on the basis of the internal report of the architect the demand was made for excess area is not acceptable because no such report or any other document has been filed by the opposite party to prove the excess area. Once the original plan is approved by the competent authority, the areas of residential unit as well as of the common spaces and common buildings are specified and super area cannot change until there is change in either the area of the flat or in the area of any of the common buildings or the total area of the project (plot area) is changed. The real test for excess area would be that the opposite party should provide a comparison of the areas of the original approved common spaces and the flats with finally approved common spaces/buildings and the flats. This has not been done. In fact, this is a common practice adopted by majority of builders/developers which is basically an unfair trade practice. This has become a means to extract extra money from the allottees at the time when allottee cannot leave the project as his substantial amount is locked in the project and he is about to take possession. There is no prevailing system when the competent authority which approves the plan issues some kind of certificate in respect of the extra super area at the final stage. There is no harm in communicating and charging for the extra area at the final stage but for the sake of transparency the must share the actual reason for increase in the super area based on the comparison of the originally approved buildings and finally approved buildings. Basically, the idea is that the opposite party allottee must know the change in the finally approved lay-out and areas of common spaces and the originally approved lay-out and areas. In my view, until this is done, the opposite party is not entitled to payment of any excess area. Though the Real Estate Regulation Act (RERA) 2016 has made it compulsory for the builders/developers to indicate the carpet area of the flat, however the, problem of super area is not yet fully solved and further reforms are required.*

34. In view of the above, the Authority has clear observation that there was an increase in a super area which was intimated to the complainants at the time of offer of possession and not before. Further, no justification and intimation were made to the complainants in respect of increase in area. So, the respondent can charge from the complainants only on account of increase in the super area up to 10% as per clause 9.2 of the

buyer's agreement after providing proper justification and specific details regarding the increase in the super area/carpet area.

35. As per clause 14.1 of the agreement dated 23.12.2013, it was agreed between the parties that the expenses of the maintenance charges shall be borne and paid by the allottee. The relevant portion of the said clause is reproduced below for the ready reference:

> ***14.1. Maintenance of the said Building/said Complex/said apartment:***
> *In order to provide necessary maintenance services, dedicated focus and transparency in accounting and audit procedures the developer/company shall, upon the completion of the said building/ said complex, handover the maintenance of the said building/ said complex to any association/ body/ condominium of apartment owners or to any other nominee/agency/association of apartment owners or body(hereinafter referred to as "maintenance agency") as the developer/company in its sole discretion hereby agrees to execute tripartite maintenance agreement with the maintenance agency as may be appointed/ nominated by the developer/company from time to time for the maintenance and upkeep of the said portion of land/ the said building/ the said complex. The intending allottee(s) further undertakes to abide by the terms and conditions of the tripartite maintenance agreement and to pay promptly all the demands, bills, charges as may be raised by the maintenance agency from time to time. The developer/company reserves the right to change, modify, amend, impose additional conditions in the tripartite maintenance agreement at the time of its final execution. The maintenance charges shall become applicable/ payable from the date the maintenance agency commences the maintenance of the said complex/ said building after the developer/ company has received the occupation certificate/ the date of allotment, whichever is later.*

36. In view of the above-mentioned facts, the maintenance charges are to be paid by the complainants-allottee in terms of clause 14 of the agreement dated 23.12.2013 executed between the parties subject to obtaining of occupation certificate.

37. The Authority is of the view that the respondent shall charge maintenance charges in terms of the agreed terms after obtaining occupation certificate. In the present complaint, the respondent has obtained the occupation certificate on 12.07.2024. Thus, the respondent shall charge the maintenance charges in consonance with

the terms of buyer's agreement dated 23.12.2013 and agreed payment plan.

38. Keeping in view the above-mentioned clauses of the buyer's agreement, the Authority hereby directs the respondent to not to charge anything beyond what has been agreed vide agreement dated 23.12.2013 and if anything beyond the same has been charged, the respondent shall refund the amount to the complainants.

G.VI Direct the respondent to issue a final tax invoice/statement of account and a lawful possession letter.

39. In the present complaint, the respondent has obtained the occupation certificate on 12.07.2024 and thereafter made an offer of possession on 17.07.2024. As the offer of possession is made after obtaining of occupation certificate thus, it can be considered as a valid offer of possession. Moreover, in the offer of possession dated 17.07.2024 it is mentioned that *"there is no dues payable by the allottee(s) in respect of the above-mentioned unit and he/she/ they have paid all taxes/respect of the same up to date. However, the allottee(s) shall be liable to pay registration charges and stamp duty charges at the time of registration and also liable to pay maintenance charges in consideration of settlement agreement signed by the allotee(s) of the said unit."*

G.VII Direct the respondent not to make the complainants sign any maintenance agreement as the project has been ordered to be handed over to the Apartment Owner's Association.

40. On perusal of the documents placed on record, the Authority has observed that a service and maintenance agreement has already been executed between the complainants, respondent no. 1 and M/s Pragati Associate Pvt. Ltd. on 22.11.2024. Thus, no direction to this effect.

G.VIII Award compensation/damages to the complainants for mental agony, harassment, inconvenience, and financial loss suffered, including rent and other incidental charges, occasioned by the inordinate delay and deficiencies attributable to the respondent.

G.IX Award the costs of litigation in favour of the complainants and against the respondent.

41. The above-mentioned relief(s) sought by the complainants are taken together being inter-connected.

42. The complainants are seeking relief w.r.t compensation in the aforesaid relief, **Hon'ble Supreme Court of India in civil appeal titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. Supra** held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.

H. Directions of the Authority:

43. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

i. The respondent no. 1 is directed to pay the interest at the prescribed rate i.e., 10.80% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 23.06.2017 till 17.09.2024 i.e., expiry of 2 months from the date of offer of possession (17.07.2024).

ii. The respondent no. 1 is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.

iii. The respondent no. 1shall handover the possession within a period of 30 days from the date of this order.

iv. The respondent no. 1 is directed to execute the conveyance deed of the allotted unit in terms of Section 17 of the Act, 2016 on payment of requisite stamp duty by the complainants.

v. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

vi. The respondent no. 1 shall not charge anything from the complainants which is not the part of the buyer's agreement.

44. Complaint stands disposed of.

45. File be consigned to the registry.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 08.09.2026